

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

NIEVES CALDERON,	:
Plaintiff	:
v.	:
UNITED STATES DISTRICT COURT,	:
WESTERN DISTRICT OF	:
PENNSYLVANIA,	:
Defendant	:

Case No. 3:07-cv-100-NBF-KAP

Report and Recommendation

Recommendation

Whether construed as a complaint or a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, this matter should be dismissed as frivolous and meritless.

Report

Plaintiff or petitioner Calderon is confined awaiting trial for federal controlled substances offenses. United States v. Calderon, Case No. 3:06-cr-23-KRG-KAP. His pleading claims that this court is liable to him because he is a "sovereign" and so advised the court when he appeared before Judge Gibson on April 19, 2007. Judge Gibson allegedly stipulated to the fact that Calderon is a sovereign but nevertheless did not release him from custody. Calderon seeks an order releasing him, and money damages.

This court could in principle have jurisdiction over a claim against Judge Gibson (or any other judge) in his individual capacity, but Judge Gibson has absolute immunity for all the actions alleged in the complaint since they were allegedly taken in his capacity as a judge. See Mireles v. Waco, 502 U.S. 9 (1991). Calderon's demand for his release in the future is the

functional equivalent of a request for a writ of habeas corpus, see Preiser v. Rodriguez, 411 U.S. 475 (1973), and is premature. If petitioner were to be convicted, he would have to proceed first through a direct appeal and then under 28 U.S.C. § 2255 before seeking a writ of habeas corpus. At this point, any request Calderon has for modification of the conditions of his pretrial detention should be pursued in proceedings under the Bail Reform Act of 1984.

As for Calderon's alleged sovereignty, it is not a matter justiciable in this court. If the Executive Branch acknowledges Calderon a sovereign, he may apply for appropriate relief. In the meantime, he has no claim in this Court.

Pursuant to 28 U.S.C. § 636(b)(1), the parties are given notice that they have ten days to serve and file written objections to this Report and Recommendation.

DATE: 31 May 2007

Keith A. Pesto
Keith A. Pesto,
United States Magistrate Judge

Notice by U.S. Mail to:

Nieves Calderon
Cambria County Prison
425 Manor Drive
Ebensburg, PA 15931